

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 1, 2001

GSBCA 15443-TRAV

In the Matter of JESSE CHAVEZ

Jesse Chavez, Yuma, AZ, Claimant.

Lynn M. Rizer, Human Resources Central Office, Labor & Employee Relations Division, Navy Region Southwest, San Diego, CA, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

In January 2000, Jesse Chavez was working for the Southwest Division of the Naval Facilities Engineering Command at Camp Pendleton, California. The command assigned Mr. Chavez to attend a two-day training program in San Diego, an hour's drive to the south of Camp Pendleton and a considerably longer drive from Mr. Chavez's home. The employee attended the program. The command paid for his transportation expenses, but nothing more. The command and the employee disagree as to whether travel orders should have been issued for this assignment and if so, whether the orders should have authorized reimbursement of lodging expenses and a per diem allowance to cover meals and incidental expenses.

Mr. Chavez was the president of the National Federation of Federal Employees (NFFE) local at the facility. He filed a grievance under the procedures established in a collective bargaining agreement between the local and facility management. At both step one and step two of the procedures, the grievance was denied. Mr. Chavez, on behalf of the local, then requested that the grievance be decided by an arbitrator. The local did not advance the process of selecting an arbitrator, however, and Mr. Chavez has more recently sought a ruling from the General Services Board of Contract Appeals.

In light of the fact that the issue presented has already been the subject of grievance proceedings, the Board asked Mr. Chavez and the Navy to address our jurisdiction to consider the claim. As we informed the employee and the agency, the Civil Service Reform Act provides that generally, collective bargaining agreements are to provide procedures for the settlement of grievances, and that with limited exceptions, the procedures set out in such agreements "shall be the exclusive administrative procedures for resolving grievances which fall within its coverage." 5 U.S.C. § 7121(a)(1) (1994). The Court of Appeals for the Federal Circuit has consistently held that this law means that if a matter is arguably entrusted to a grievance procedure, no administrative review outside that procedure may take place

unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedure. Dunkleberger v. Merit Systems Protection Board, 130 F.3d 1476 (Fed. Cir. 1997); see also Muniz v. United States, 972 F.2d 1304 (Fed. Cir. 1992); Carter v. Gibbs, 909 F.2d 1452 (Fed. Cir.) (en banc), cert. denied, 498 U.S. 811 (1990).

In recognition of the law and the court's exposition of it, this Board has consistently dismissed for lack of jurisdiction claims which are susceptible to resolution through a collective bargaining agreement's grievance procedures. See, e.g., Kenneth J. Hjerpe, GSBCA 15365-TRAV, 01-1 BCA ¶ 31,189 (2000); James M. Brewer, GSBCA 14936-RELO, 99-2 BCA ¶ 30,503; Claudia J. Fleming-Howlett, GSBCA 14236-RELO, 98-1 BCA ¶ 29,534; Bernadette Hastak, GSBCA 13938-TRAV, et al., 97-2 BCA ¶ 29,091. On the other hand, where matters in dispute are specifically addressed by statute, we may decide a claim even where a collective bargaining agreement is in place. Charles M. Aufer, GSBCA 15231-TRAV, 00-1 BCA ¶ 30,898; John B. Courtney, GSBCA 14508-TRAV, 98-2 BCA ¶ 29,791.

The collective bargaining agreement between the NFFE local and the command in question provides for resolution through the agreement's grievance procedure of complaints concerning "[a]ny claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment." The dispute at issue falls within this definition. The command believes that resolution is governed by the Joint Travel Regulations (JTR), which are issued by the Department of Defense and apply to civilian employees of that department. Neither side has suggested that the matter may be resolved by specific application of a statute. Under applicable court and Board decisions, then, the dispute would appear to fall outside our jurisdiction.

Mr. Chavez raises three objections to this conclusion: (1) He is an employee who is exempt from the requirements of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219 (1994 & Supp. IV 1998). The collective bargaining agreement contains provisions regarding whether a non-exempt employee is on duty status while traveling. Therefore, the agreement does not apply to travel issues involving him. (2) The agreement says that "[a]rbitration does not extend to the interpretation or change of the Department of the Navy or higher authority regulations." The JTR, since they are issued by a department of which the Navy is a constituent part, are "higher authority regulations." Therefore, arbitration under the agreement could not address this dispute. (3) No other agency will accept jurisdiction over the claim. Therefore, this Board should accept jurisdiction.

We do not find any of these arguments persuasive. First, collective bargaining agreement grievance procedures are available to all members of a bargaining unit, whether those members are exempt from FLSA requirements or not. This agreement's provisions regarding a non-exempt employee's duty status have no bearing on this case. In any event, they could not be considered by this Board because they involve employees' compensation, a subject as to which the Director of the Office of Personnel Management settles employee claims. See 31 U.S.C. § 3702(a)(2) (Supp. IV 1998). Second, this collective bargaining agreement's exclusion from arbitration of the interpretation of regulations does not vest this Board with jurisdiction over those matters. The Court of Appeals for the Federal Circuit has rejected an argument that such an exclusion removes a matter from the grievance process. Instead, according to the court, it simply limits an arbitrator's power; the arbitrator must hinge

his decision on an authoritative interpretation of applicable regulations. Muniz, 972 F.2d at 1310, 1320-21. Neither the employee nor the agency contends that there was anything improper in sending the matter through step one and step two of those procedures. Because the collective bargaining agreement's grievance procedures are the "exclusive administrative procedures for resolving grievances which fall within its coverage," 5 U.S.C. § 7121(a)(1), we have no jurisdiction over the claim. Third, even if no other administrative authority may consider this claim, that does not give this Board jurisdiction to hear it.

The case is dismissed.

STEPHEN M. DANIELS
Board Judge